

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1135

AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-22-2-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) Except as provided in section 23.1 of this chapter, this section does not apply to the adoption of rules:

(1) required ~~by statute if initiation of the rules is contingent upon the receipt of a waiver under federal law, to receive or maintain:~~

(A) delegation;

(B) primacy; or

(C) approval;

**for state implementation or operation of a program established under federal law;**

(2) that amend an existing rule;

(3) required **or authorized** by statutes enacted before June 30, 1995; or

(4) required **or authorized** by statutes enacted before June 30, 1995, and recodified in the same or similar form after June 29, 1995, in response to a program of statutory recodification conducted by the code revision commission.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective.

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(c) However, an agency shall:

- (1) begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule; or
- (2) if an agency cannot comply with subdivision (1), ~~immediately~~ provide written notification to the administrative rules oversight committee stating the reasons for the agency's noncompliance.

If an agency notifies the administrative rules oversight committee concerning a rule in compliance with subdivision (2), failure to adopt the rule within the time specified in subdivision (1) does not invalidate the rule.

SECTION 2. IC 4-22-2-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) Whenever an agency submits a rule to the publisher, the attorney general, the governor, or the secretary of state under this chapter, the agency shall submit the rule in the form of a written document that:

- (1) is clear, concise, and easy to interpret and to apply; and
- (2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

**(b) After June 30, 2006, all documents submitted to the publisher under this chapter must be submitted electronically in the format specified by the publisher.**

SECTION 3. IC 4-22-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. (a) This section does not apply to rules adopted under IC 4-22-2-37.1.

(b) **At least twenty-eight (28) days before** ~~or after~~ an agency notifies the public of ~~its~~ **the agency's** intention to adopt a rule under section 24 of this chapter, the agency shall notify the public of its intention to adopt a rule by publishing a notice of intent to adopt a rule in the Indiana Register. ~~at least thirty (30) days before the preliminary adoption of the rule.~~ The publication notice must include an overview of the intent and scope of the proposed rule and the statutory authority for the rule.

(c) The requirement to publish a notice of intent to adopt a rule **under subsection (b)** does not apply to rulemaking under IC 13-14-9. ~~The~~

**(d) In addition to the procedures required by this article, an agency shall may** solicit comments from the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views.

(e) The agency shall prepare a written response that contains a

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summary of the comments received during any part of the rulemaking process. The written response is a public document. The agency shall make the written response available to interested parties upon request.

SECTION 4. IC 4-22-2-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c).

(b) The agency shall cause a notice of a public hearing to be published once in one (1) newspaper of general circulation in Marion County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper. **An agency may not contract for the publication of a notice under this chapter until the agency has received a written or an electronic authorization to proceed from the publisher under subsection (g).**

(c) The agency shall cause a notice of public hearing and the full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher **in accordance with subsection (g)**. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) The agency shall include in the notice required by subsections (b) and (c):

- (1) a statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened;
- (2) a general description of the subject matter of the proposed rule; and
- (3) an explanation that the proposed rule may be inspected and copied at the office of the agency.

However, inadequacy or insufficiency of the subject matter description in a notice does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least twenty-one (21) days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

**(g) The publisher shall review materials submitted under this**

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section and determine the date that the publisher intends to include the material in the Indiana Register. After:

- (1) establishing the intended publication date; and
- (2) receiving the public hearing information specified in subsection (d) from the agency;

the publisher shall provide a written or an electronic mail authorization to proceed to the agency.

SECTION 5. IC 4-22-2-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. (a) After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit **the following to the attorney general:**

- (1) The rule in the form required by section 20 of this chapter. ~~and with.~~
- (2) The documents required by section 21 of this chapter.
- (3) **Written authorization to proceed issued by the publisher under section 24(g) of this chapter.**
- (4) **Any other documents specified by the attorney general.**

The attorney general may require the agency to submit any supporting documentation that the attorney general considers necessary for the attorney general's review under section 32 of this chapter. The agency may submit any additional supporting documentation the agency considers necessary.

(b) ~~The attorney general shall determine the number of copies of the rule; and other documents to be submitted under this section: agency shall submit the following documents to the attorney general:~~

- (1) ~~One~~ (1) original copy of the rule.
- (2) ~~Two~~ (2) copies of the rule.
- (3) ~~One~~ (1) copy of any matters incorporated by reference under section 21 of this chapter.
- (4) ~~Two~~ (2) copies of any supporting documentation submitted under subsection (a).

SECTION 6. IC 4-22-2-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 33. (a) After a rule has been approved or deemed approved under section 32 of this chapter, the agency shall submit the rule to the governor for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) ~~The agency shall submit to the governor shall determine the number of the copies of the rule and other documents to be submitted under this section: specified in section 31 of this chapter.~~

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SECTION 7. IC 4-22-2-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. (a) When a rule has been approved or deemed approved by the governor within the period allowed by section 25 of this chapter, the agency shall immediately submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The **agency shall submit to the** secretary of state ~~shall determine the number of the~~ copies of the rule and other documents ~~to be submitted under this section. specified in section 31 of this chapter.~~

(c) Subject to section 39 of this chapter, the secretary of state shall:

- (1) accept the rule for filing; and
- (2) file stamp and indicate the date and time the rule is accepted on every duplicate original copy submitted.

SECTION 8. IC 4-22-2-39 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 39. (a) When an agency submits a rule for filing under section 35, 37.1, or 38 of this chapter, the secretary of state may accept the rule for filing only if the following conditions are met:

(1) ~~A sufficient number of duplicate original copies of the rule are~~ **The following documents are** submitted to allow the secretary of state to comply with IC 4-22-7-5:

**(A) One (1) original copy of the rule.**

**(B) Two (2) copies of the rule.**

**(C) One (1) copy of any matters incorporated by reference under section 21 of this chapter.**

**(D) Two (2) copies of any supporting documentation submitted under section 31(a) of this chapter.**

(2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.

(3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule, the secretary of state shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.

(b) If a rule includes a statement that the rule is not effective until:

- (1) an agency has complied with requirements established by the federal or state government;
- (2) a specific period of time has elapsed; or
- (3) a date has occurred;

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the agency has complied with subsection (a)(3) even if the described event or time has not occurred before the secretary of state reviews the rule under this section.

(c) The secretary of state shall take no more than three (3) business days to complete the review of a rule under this section.

SECTION 9. IC 4-22-2.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as provided in subsection (b) or section 1.1 of this chapter, an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. The expiration date of a rule under this section is extended each time that a rule amending an unexpired rule takes effect. The rule, as amended, expires on January 1 of the seventh year after the year in which the amendment takes effect.

(b) An administrative rule that:

- (1) was adopted under IC 4-22-2;
- (2) is in force on December 31, 1995; and
- (3) is not amended by a rule that takes effect after December 31, 1995, and before January 1, 2002;

expires not later than January 1, 2002.

**(c) The determination of whether an administrative rule expires under this chapter shall be applied at the level of an Indiana Administrative Code section.**

SECTION 10. IC 4-22-2.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as provided in subsection (b), an agency may readopt all rules subject to expiration under this chapter under one (1) rule that lists all rules that are readopted by their titles and subtitles only. A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If, not later than thirty (30) days after an agency's publication of notice of its intention to adopt a rule under ~~IC 4-22-2-24~~ **IC 4-22-2-23** using the listing allowed under subsection (a), a person submits to the agency a written request and the person's basis for the request that a particular rule be readopted separately from the readoption rule described in subsection (a), the agency must:

- (1) readopt that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 4-22-2 with respect to the rule.

(c) If the agency does not receive a written request under subsection (b) regarding a rule within thirty (30) days after the agency's

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publication of notice, the agency may:

- (1) submit the rule for filing with the secretary of state under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule; or
- (2) elect the procedure for readoption under IC 4-22-2.

SECTION 11. IC 4-22-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. An agency shall maintain a ~~duplicate original~~ copy of each rule that has been filed with the secretary of state (including documents filed with the secretary of state under IC 4-22-2-21) under a retention schedule established by the commission on public records.

SECTION 12. IC 4-22-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) ~~Except as provided in subsection (f),~~ **The secretary of state shall retain a duplicate the original copy of each rule that has been accepted for filing by the secretary of state (including documents filed with the secretary of state under IC 4-22-2-21) and one (1) copy of any supporting documentation submitted under section 31 of this chapter.** The secretary of state has official custody of an agency's adopted rules.

(b) Within one (1) business day after the date that the secretary of state accepts a rule for filing, the secretary of state shall distribute ~~two (2) duplicate copies~~ **one (1) copy** of the rule to the publisher in ~~paper~~ **the form specified by the publisher. The secretary of state shall also return to the agency one (1) copy of the rule and one (1) copy of any supporting documentation submitted under section 31 of this chapter.** However, the secretary of state may distribute the rule without including the full text of any matter incorporated into the rule.

(c) When the copies are distributed under subsection (b), the secretary of state shall include a notice briefly describing the incorporated matters.

~~(d) Within ninety (90) days after the secretary of state accepts a rule for filing, the secretary of state may distribute duplicate originals of the rule, as follows:~~

- ~~(1) To the governor, one (1) copy;~~
- ~~(2) To the attorney general, one (1) copy;~~
- ~~(3) To the Indiana library and historical department, two (2) copies;~~
- ~~(4) After December 31, 1987, to the commission on public records, the number of copies needed by the commission for its archive program under IC 5-15-5-1;~~
- ~~(e) The secretary of state may distribute copies under subsection (d)~~

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in micrographic or electronic form. The micrographic copies shall be prepared under IC 4-5-1-2.

(f) If a final rule includes material that has been incorporated by reference under IC 4-22-2-21, the secretary of state may:

(1) retain custody of the secretary of state's original copy of the material; or

(2) transfer the secretary of state's original copy of the material to the Indiana library and historical department when the secretary of state transfers two (2) copies of the duplicate original rule to the Indiana library and historical department under this section.

SECTION 13. IC 4-22-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The publisher shall publish a serial publication with the name Indiana Register at least six (6) times each year.

(b) Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Register in electronic form only. However, the publisher shall distribute a printed copy of the Indiana Register to each federal depository library in Indiana.

(c) The publisher may meet the requirement to publish the Indiana Register electronically by permanently publishing a copy of the Indiana Register on the Internet.

SECTION 14. IC 4-22-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The publisher shall compile, computerize, index, and print a codification of the general and permanent rules of the agencies with the name Indiana Administrative Code. The publisher may publish, with the Indiana Administrative Code, any tables, explanatory material, or other documents that the publisher considers appropriate.

(b) The publisher shall establish a system to maintain, supplement, and recompile the Indiana Administrative Code when necessary or appropriate.

(c) Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Administrative Code in electronic form only. However, the publisher shall distribute a printed copy of the Indiana Administrative Code to each federal depository library in Indiana.

(d) The publisher may meet the requirement to publish the Indiana Administrative Code electronically by permanently publishing a copy of the Indiana Administrative Code on the Internet.

SECTION 15. IC 4-22-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Before an edition

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or supplement of the Indiana Administrative Code is printed **or (after June 30, 2006) published in electronic form**, the publisher shall deliver an affidavit to the secretary of state attesting that the text to be published in the edition or supplement has been compared with the preceding edition, the preceding supplement (if applicable), and the appropriate original versions of recently adopted rules and has been found to be correct and complete.

(b) Upon delivery of an affidavit under this section, the secretary of state shall certify the receipt of the affidavit and the publisher's assertions for the edition or supplement to which they apply.

SECTION 16. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as provided in subsection (b), the department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Identify the authority under which the proposed rule is to be adopted.
- (2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.
- (3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.
- (4) Request the submission of alternative ways to achieve the purpose of the proposed rule.
- (5) Request the submission of comments, including suggestions of specific language for the proposed rule.
- (6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

(b) This section does not apply to rules adopted under IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.

**(c) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher.**

SECTION 17. IC 13-14-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

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(1) Contain the full text of the proposed rule, as provided under IC 4-22-2-24(c).

(2) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter during the first public comment period.

(3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.

(5) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that is not imposed under federal law.

(6) With respect to each element identified under subdivision (5), identify:

(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;

(B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and

(C) the:

(i) estimated fiscal impact; and

(ii) expected benefits;

based on the extent to which the proposed rule exceeds the requirements of federal law.

(7) For any element of the proposed rule that imposes a restriction or requirement that is not imposed under federal law, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:

(A) health criteria;

(B) analytical methods;

(C) treatment technology;

(D) economic impact data;

(E) environmental assessment data;

(F) analyses of methods to effectively implement the proposed rule; and

(G) other background data.

**(b) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher.**

SECTION 18. IC 13-14-9.5-2 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as provided in subsection (b) or section 1.1 of this chapter, an administrative rule adopted under IC 13-14-9 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. The expiration date of a rule under this section is extended each time that a rule amending an unexpired rule takes effect. The rule, as amended, expires on January 1 of the seventh year after the year in which the amendment takes effect.

(b) An administrative rule that:

(1) was adopted under a provision of IC 13 that has been repealed by a recodification of IC 13;

(2) is in force on December 31, 1995; and

(3) is not amended by a rule that takes effect after December 31, 1995, and before January 1, 2002;

expires not later than January 1, 2002.

**(c) The determination of whether an administrative rule expires under this chapter shall be applied at the level of an Indiana Administrative Code section.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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